
(2004) 12 CAL CK 0003
In the Calcutta High Court
Case No : M.A.T. No. 3582 of 2004

Mandira Mookerjee

APPELLANT

Vs

District Consumer Disputes Redressal Forum and Others

RESPONDENT

Date of Decision : 01-12-2004

Acts Referred:

Arbitration Act, 1940 — Section 34
Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 141
Consumer Protection Act, 1986 — Section 11, 2(1), 3
Registration Act, 1908 — Section 17, 17(1A), 32, 33
Sales of Goods Act, 1930 — Section 2
Transfer of Property Act, 1882 — Section 53A

Citation : AIR 2005 Cal 108 : (2005) 4 CHN 694

Hon'ble Judges : Rajendra Nath Sinha, J; Dilip Kumar Seth, J

Bench : Division Bench

Advocate : Kamalesh Bhattacharya, Biswarup Biswas and Rajib Mohan Chatterjee, for the Appellant; Samit Talukdar, Kamal Kumar Sharma, Rajshree Kajaria and Jishnu Chowdhury, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Seth, J.—The controversy :

Reliefs were sought by the respondent/ writ petitioner for execution of the conveyance pursuant to an agreement for purchase of a flat under the scheme formulated by the developer under agreement with the owner before the Consumer Forum. The Consumer Forum had occasion to impound the agreement between the owner promoter and the consumer on the ground that it was not properly stamped. However, Mr. Talukdar on behalf of the respondent points out that proper stamp-duty was paid by the consumer on the agreement between him and the owner/promoter. But Mr. Bhattacharya on behalf of the appellant contends that this agreement was not registered though it is compulsorily registrable u/s 17 Sub-section (1-A) of the Registration Act incorporated through

amendment by Act 48 of 2001 with effect from 24th September 2001, since the agreement was entered into thereafter in October 2001. Therefore, according to Mr. Bhattacharya, no relief can be had on the basis of such a document on two fold reasons -- One that the document is impounded and the other that the document is not a registered one, even if it is stamped subsequent to the impounding of the agreement. However, Mr. Talukdar points out that he has no instruction as to whether the document was registered or not.

The scope :

2. Whether the document is registered or not, whether any such relief can be had on merit before the Consumer Forum within the scope and ambit thereof, are points to be agitated before the Consumer Forum or the appropriate Forum, as the case may be. We keep all these points, except the point relating to jurisdiction /maintainability, open.

2.1. We would like to confine ourselves only to the question raised before this Court in the writ petition following prayers formulated in the writ petition by the appellant herein, which we would prefer to quote as hereafter :

"a. Writ in the nature of Mandamus declaring that the respondent No. 1 has no jurisdiction to receive, try or determine the issue involved in D. F. Case No. 461 of 2003 and the said D. F. Case No. 461 of 2003 is liable to be quashed.

b. Writ in the nature of Mandamus commanding the respondent No. 1 to refrain from entertaining the application being D. F. Case No. 461 of 2003 and to further refrain from giving any effect or further effect to the order passed in said D. F. Case No. 461 of 2003 and to hold that the respondent No. 1 has no jurisdiction to entertain the said application being D, F. Case No; 461 of 2003.

c. Writ in the nature of Certiorari calling upon the respondents to produce before this Hon"ble Court all records relating to the present case including the record of D. F. Case No. 461 of 2003 and upon perusal of records conscionable justice may be rendered to the petitioner by quashing D. F. Case No. 461 of 2003 pending before the District Consumer Disputes Redressal Forum, South 24 Parganas;

d. Issue declaration that District Consumer Disputes Redressal Forum has no jurisdiction to receive, try and determine the case being D. F. Case No. 461 of 2003 pending before the Forum.

e. Rule in terms of prayer "a, "b", "c", "d" above".

Submission on behalf of the appellant:

3. This question has been sought to be supported by Mr. Kamalesh Bhattacharya on the ground that the agreement, assuming but not admitting, is enforceable, gives right to the enforcement of specific performance of an agreement for sale of an immovable property which can only be had through the provisions contained in the Specific Relief Act, a remedy whereunder is available only before a Civil Court. The jurisdiction of the Consumer Forum does not extend or stretch

to grant of specific relief, which is the domain of the Civil Court. According to him, an agreement for sale of an immovable property does not come within the scope and ambit of the Consumer Protection Act, 1986. He refers to Section 2(i) defining "goods" as defined in the Sale of Goods Act, 1930. According to him, the definition of goods as defined cannot include an immovable property, which is subject to Transfer of Property Act and enforceable through the Specific Relief Act in respect whereof a deed of conveyance is required to be executed and is compulsorily registrable u/s 17 of the Registration Act and such deed is also required to be stamped by necessary duty or fees as the case may be. Whereas, the jurisdiction of the District Forum as contained in Section 11 of the 1986 Act confines to entertain complaints relating to goods or services. According to him, it cannot stretch or extend to execution and registration of conveyance relating to immovable property.

3.1. Pointing out to the definition of "deficiency" in Section 2(g), he points out that the relief which is being asked for before the Consumer Forum does not come within the scope and ambit of the said definition of deficiency. At the same time, he has also pointed out that the definition of "consumer" u/s 2(d) does not admit a purchaser of an immovable property. Relying on the definition of "service" u/s 2(o), he contends that even if service includes housing construction even then this particular petition would not be maintainable before the District Forum for the relief, which is conclusively a sale of an immovable property to be effected through the execution and registration of the conveyance.

3.2. He points out that the decision, relied on by the learned single Judge, about which the learned single Judge had some reservations, as reflected in the judgment itself, does not operate in the field so as to exclude the appellant from raising these questions before the High Court. Mr. Bhattacharya had sought to distinguish those decisions and points out that the learned single Judge has not attempted to distinguish these decisions which clearly shows that the decisions of the Apex Court would not bar the contention raised in this appeal or the writ petition.

3.3. In order to sustain his contention, he has also referred to the Registration Act relating to presentation of document referred to Sections 32 and 33 thereof. He contends that the document can be presented either by the executant or by the holder of the Power of Attorney, which is admissible u/s 33 of the Registration Act and not otherwise. According to him, the power of attorney not being registered, the same would not be admissible and the promoter cannot get the document of the deed of conveyance executed and registered and therefore, no relief could be had before the Consumer Forum. Mr. Bhattacharya had relied on the decision in *Dulal Ranjan Ghosh Dastidar v. Rajani Tandon*, 2004 (1) Cal HN 517 wherein the principle emanating from Sections 32 and 33 of the Registration act were elaborated by a learned single Judge of this Court.

3.4. Therefore, according to him, the order of the learned single Judge should be set aside and the appeal be allowed.

Submission on behalf of the respondent:

4. Mr. Talukdar, learned counsel for the respondent, on the other hand, points out and refers to the decision in *Lt. Col. P.R. Chaudhary (Retd.) Vs. Municipal Corporation of Delhi*, wherein it was held that the decision of the Apex Court cannot be brushed aside on the ground that it had not taken into consideration certain statutory provisions or otherwise. Therefore, the grounds on which Mr. Bhattacharya has sought to distinguish those decisions cannot be grounds sufficient to enable him to get rid of the precedent arising out of the said decision (*Lt. Col. P.R. Chaudhary (supra)*) on account of Article 141 of the Constitution of India.

4.1. Mr. Talukdar had relied on the decision in *Mr. France B. Martins and Another Vs. Mrs. Mafalda Maria Teresa Rodrigues*, to contend that the relief of execution of a deed of conveyance can be had before the Consumer Forum. He then relied on the decision in *Secretary, The Secretary, Thirumurugan Co-operative Agricultural Credit Society Vs. M. Lalitha (Dead) through Lrs. and Others*, to support his contention that the relief of execution and registration of deed of conveyance is not excluded from the jurisdiction of the Consumer Forum. He also relied on the decision in *Olympus Superstructures Pvt. Ltd. Vs. Meena Vijay Khetan and Others*, wherein it was held that even the Arbitrator can grant the relief of specific performance of sale of an immovable property. According to him, if the Arbitrator can grant such relief, then there is no bar for the Consumer Forum to grant the same relief.

4.2. He points out further that the question of registration and the impounding and payment of stamp duty are the matters which need not be gone into in this appeal and that the presentation by the executant or the holder of power of attorney or otherwise are matters irrelevant for the purpose of deciding as to whether the Consumer Forum can entertain this petition or not. Inasmuch as those are matters, which can be agitated before the Consumer Forum by the parties on the strength whereof the relief can be denied or granted on merit, as the case may be, by the Consumer Forum.

4.3. On the other hand, he attempts to distinguish the definition of the word "consumer", "deficiency", "good" and "services" as sought to be advanced by Mr. Bhattacharya and points out that the agreement was not pure and simple an agreement for execution of the deed of conveyance of an immovable property. According to him, this is a composite deed or contract, which not only includes a housing construction but also various other service contracts as indicated in the contract itself. The series of obligations which the promoter or the owner had undertaken conjointly to perform in terms of the agreement/contract in relation to the purchaser /consumer consists of various other services or performance of contract which are to be performed under the agreement for consideration. As such the definition of the words as mentioned above would also attract and extend to the reliefs claimed before the Consumer Forum in the facts and circumstances of the case. Therefore, the learned single Judge was right in

following the decision of the Apex Court, though Mr. Talukdar had criticized the reservation noted by the learned single Judge in the judgment. On these grounds Mr. Talukdar had prayed that the appeal be dismissed.

The confine :

5. After having heard the learned Counsel for the parties, as initially noted, we would like to confine ourselves to the moot question which we are called upon to answer and keep all other points open to be agitated before the Consumer Forum. We need not go into the question of the presentation of the document or the non-registration of the power of attorney or the effect thereof, for the simple reason that the owner is also a party to the proceedings against whom the relief for execution and registration of a document can also be granted. Similarly, we need not go into the question of compulsory registrability of the agreement for sale in view of the amended provisions of Section 17 incorporated through Sub-section (1-A) of the Registration Act for the simple reason that this question would remain open to be agitated before the Consumer Forum.

The nature of the agreement & admitted propositions :

6. The agreement depended upon, does not seem to be a simple agreement for conveyance relating to sale of an immovable property. It appears to be a composite agreement, which include housing construction and various other services to be rendered by the developer and the owner conjointly under a scheme for consideration. Our attention has been drawn to the terms and conditions contained in various clauses of the agreement. It is apparent therefrom that the agreement, apart from the execution of conveyance, contains various other conditions for services and performances etc. preceding the execution of the conveyance, which is a consequence being fall out of the agreement pursuant to the agreed services, all of which, except the final outcome has already been performed. The execution and registration of the conveyance by the owner is a service to be performed by the promoter. Thus the agreement is not a simple agreement for sale of immovable property, but an agreement /contract for performances of various services including execution and registration of the deed of conveyance.

6.1. Admittedly, the flat has since been constructed; the possession of the flat has since been given to the consumer; the consumer has paid the full consideration therefor; that various other services have been provided in the flat namely supply of water, electricity and other amenities. In such circumstances, it is only the deed of conveyance, transferring right title and interest in the property is to be executed. Section 53A of the Transfer of Property Act (TP Act) would have clinched the issue but for the amendment of Section 17 of the Registration Act incorporating Sub-section (1-A). But we are not supposed to go into all these questions, which, as already observed, we keep open and the observation made hereinbefore with regard to the points discussed are all tentative only for the purpose of deciding the present appeal and shall not be

binding on the parties or the Consumer Forum or any other Court and shall remain open to be decided in accordance with law, if raised by and between the parties before the appropriate forum as the case may be.

Maintainability of the proceeding before the Consumer Forum :

7. Now with regard to the maintainability of the petition before the Consumer Forum, we may refer to the agreement through which we have been led. The agreement consists of various obligations on the part of the owner and the promoter resulting into a series of contracts combined in one relating to performance of certain obligations and provides services in relation thereto; it is not a simple contract for sale of an immovable property. If all actions have been done and only the service relating to execution and registration of the conveyance remains to be performed, in that event, it cannot be said that it would be a sale of immovable property simpliciter. Inasmuch as, had the agreement been registered in terms of Sub-section (1-A) of Section 17 of the Registration Act, in that event, there would not have been any bar in obtaining the benefit of the Section 53A of the TP Act and then the right title and interest in the property would not have been dependent on the execution and registration of the conveyance, it would have been only a ministerial act for giving colour to the title passed on by reason of Section 53A of the TP Act. Simply because the document was unregistered, the same would not distinguish the situation and two kinds of law cannot operate on a single field contradictory to each other for the purpose of excluding the jurisdiction of the Consumer Forum.

7.1. That apart, the Specific Relief Act is a law that recognizes the right of specific performance of a contract available to a party aggrieved and such relief can be had before the Civil Court. There is nothing in the Specific Relief Act which provides that the relief under the said Act cannot be had anywhere else other than the Civil Court. A contract can very well be enforced before an Arbitrator if it contains an Arbitration Clause.

7.2. This principle is recognized in the decision in Olympus Superstructures Pvt. Ltd. Vs. Meena Vijay Khetan and Others, wherein the Apex Court had held that the Arbitrator has every jurisdiction to grant relief of specific performance for sale of an immovable property. The Apex Court in the said decision had held in no uncertain term that the right to the specific performance of an agreement of sale deals with contractual rights and it is certainly open to the parties to agree, with a view to shorten litigation in regular Courts, to refer the issues relating to specific performance to arbitration. There is no prohibition in the Specific Relief Act, 1963 that issues relating to specific performance of contract relating to immovable property cannot be referred to arbitration. The Apex Court had occasion to deal with the decision in Lakshmi Narain and Others Vs. Raghbir Singh and Others, by Punjab High Court and the Bombay High Court in Fertiliser Corporation of India v. Chemical Construction Corporation ILR 1974 Bom 856 (DB) and the Calcutta High Court in Keventer Agro Ltd. v. Seegram Comp. Ltd. disposed of on 27th January 1998 by Hon"ble Mrs. Ruma Pal, J., as Her Lordship

then was, being APO No. 498 of 1997 while disagreeing with the decision of Delhi High Court taking a contrary view in M/s. P.N. B. Finance Ltd. Vs. Shital Prasad Jain and others, . The Apex Court had quoted the observation made by Hon"ble Mrs. Ruma Pal, J. with approval that :

"..... merely because the sections of the Specific Relief Act confer discretion on Courts to grant specific performance of a contract does not mean that parties cannot agree that the discretion will be exercised by a Forum of their choice. If the converse were true, then whenever a relief is dependent upon the exercise of discretion of a Court by statute e.g. the grant of interest or costs, parties could be precluded from referring the dispute to arbitration."

7.3. True that this decision was related to arbitration but that would not preclude the Consumer Forum to be placed in the shoes of the arbitrator principally on the ratio decided in those decisions. The question is whether any Forum other than Civil Courts can exercise discretion with regard to specific performance of contract for sale of an immovable property in terms of the Specific Relief Act or whether the jurisdiction of the Consumer Forum is excluded by reason of any provisions contained in the Specific Relief Act. If it can be true in relation to arbitration then there cannot be any bar of its being equally true in relation to a proceeding before the Consumer Forum.

7.4. However, it is not the question of discretion only having regard to the facts and circumstances of the case in relation to the grant of relief of specific performance of contract for sale of an immovable property. Inasmuch as, in the present case, the agreement is not an exclusive agreement relating to sale of an immovable property simpliciter. On the other hand, it includes various other contracts envisaging various transactions to be performed by the respective parties; it also includes contract for various kinds of services to be provided by the respective parties; it also includes certain other obligations for completing the transaction through execution of deeds and documents and presentation and registration thereof on consideration, which, admittedly, the consumer had already paid. The consumer has also paid the stamp duty payable on the deed of agreement. By reason of the attempt to seek relief before the Consumer Forum, he has expressed his readiness and willingness to perform the part of the contract he is supposed to perform. The major part of the contract is already performed leaving only a minor part to complete the performance of the contract. Therefore, we do not think that it could not be taken out of the jurisdiction of the Consumer Forum relying on the definition of the words and expressions defined in the 1986 Act, as noted hereinbefore.

7.5. We may deal with those definitions as hereafter. But before doing so. we may refer to Section 11 of the 1986 Act, in order to construe the jurisdiction of the Consumer Forum. Section 11 confers on the District Forum jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed Rs. 20 lakhs. Thus it is not only the grant of Specific Relief but also the compensation in lieu thereof is well within

the jurisdiction of the Consumer Forum and as such it cannot be said that the specific performance as contemplated in the circumstances of the case not being an agreement for sale of immovable property simpliciter could be thrown out of the jurisdiction.

7.6. Admittedly, the flat being an immovable property, may not come within the definition of "goods" within the meaning of Section 2(1) of the 1986 Act to mean, goods as defined in the Sale of Goods Act, 1930. But since the transaction contemplated, though related to immovable property, consists of various other obligations and performance and services in relation thereto comprising series of contracts combined into one, the property sought to be transferred having an element of immovable property would not preclude the other part of the contract which may consist of the performances or services which the writ petitioner or the owner are obliged to perform or provide, the jurisdiction of the Consumer Forum cannot be excluded.

7.7. So far as the definition of the consumer in Section 2(d) is concerned, in Clause (i) it means a person who buys any goods for consideration paid or promised or partly paid and partly promised or under any system of deferred payment. Whereas Clause (ii) includes person who hires any services for a consideration paid or promised or partly paid and partly promised or under any system of deferred payment. As soon the contract includes certain services a consumer entitled to receive the benefit of such services would definitely come within the definition of consumer and can very well maintain an application before the Forum under the 1986 Act.

7.8. The definition of the word "service" is of very wide amplitude. Section 2(o) defined service to mean service of any description made available to potential users and includes but not limited to various other matters including house construction. This agreement, admittedly, includes an agreement for house construction. The definition is not only inclusive of the matters enumerated but also includes all incidences related to the matters included therein by using the phrase "but not limited to". The scheme of the definition was intended not only to widen the scope of the definition but also to include all incidental as well as ancillary matters related to the service under the definition.

7.9. Thus, if there is an agreement for construction of a house with an agreement for execution and registration of a conveyance then, after the delivery upon full payment of consideration, such execution and registration of a conveyance would be a service. It would still remain a service, even if it is contended that because of the amendment of Section 17 of the Registration Act, the agreement was unenforceable since practically for all reasonable purposes and fictionally the possession of the property has been delivered to the consumer pursuant to the agreement for the sale intending to convey title to the property and the formalities relating to the execution and registration of the conveyance, a service obligation remains to be performed. In such a case where the contract is almost performed in other respects and only the formalities for legally

conveying title remains to be performed pursuant to the scheme formulated, as involved in the present case, the obligation of execution and registration of conveyance would be a "service" within the meaning thereof as defined in Section 2(o).

7.10. Now coming to the definition of "deficiency" as defined in Section 2(g), as rightly pointed out by Mr. Talukdar, it means that any fault imperfection, short coming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under law for the time being in force or has been undertaken to be performed by a person in pursuance of contract or otherwise in relation to any service. Therefore, a service which is to be performed even without a contract but for some other reason may also come within the purview of this provision, if it is undertaken in a contract, in that event, also it has to be performed as agreed. That apart the fault imperfection shortcoming or inadequacy is not limited to the quality and nature alone, it also extends to the manner of performance required to be performed in terms of the contract. Then again this definition is too wide to require performance in terms of such contract, which, one is obliged to undertake by reason of any law for the time being in force. Admittedly, in order to effectuate the contract, law required the agreement to be registered, which is also a service that can be enforced within the provisions contained in this Act. Similarly, when the law requires, in order to give effect to the contract or to the obligation of the performance of the contract, that a deed of conveyance is to be executed and registered, then such performance is also a kind of service enforceable through the provisions of this Act.

7.11. Therefore, we are unable to agree with the contention raised by Mr. Bhattacharya. We, regret our inability to persuade ourselves to agree with the reservation expressed by the learned single Judge on the question of law. We have expressed our opinion on the reasoning given herein-above having regard to the provisions contained in the 1986 Act, the Specific Relief Act and in the context of the decision of the Apex Court referred to by Mr. Talukdar, as discussed hereafter.

7.12. The contention that if all these jurisdictions are included within the jurisdiction of the Forum, in that event, the Civil Court would become redundant. We do not agree with this proposition. The Civil Court can try all kinds of suits even then specific forums are created with specific purpose related to specific matters. There is no bar in establishing parallel forum or by express or implied provisions to bar the jurisdiction of the Civil Court through legislation. The legislation of the 1986 Act is a valid piece of legislation creating specific Forum for specific purpose in relation to specific matters. The Court is not supposed to limit the jurisdiction conferred upon it by the wisdom of the legislature unless it offends any statute or some oilier law. We are, however, of the view that these provisions of 1986 Act do not offend any statute or any other law. Our attention has not been drawn to any such situation. On the other hand, Section 3 of the 1986 Act provides that the provisions of the said Act shall be in addition to and

not in derogation of the provisions of any other law.

7.13. From the discussion made above, it is clear that the proceeding is maintainable before the Consumer Forum.

The decisions cited:

8. The decision in *Mr. France B. Martins and Another Vs. Mrs. Mafalda Maria Teresa Rodrigues*, was sought to be distinguished by Mr. Bhattacharya on the ground that the Apex Court was not called upon to decide the impact of Specific Relief Act in relation to the question raised before it. The Apex Court had answered the question simply in relation to the applicability of the limitation and as such this cannot be taken to be a decision binding when the provisions of Specific Relief Act is set up against it. A decision of the Apex Court is binding not because of the reasoning given in it but because of Article 141 of the constitution of India. The binding nature cannot be overlooked or brushed aside simply on the ground that a particular argument was not advanced and considered or a particular point was not raised and considered or a particular specific law is overlooked unless it could be said to be *per incurium*.

8.1. That apart the ratio has to be followed from the issues involved in the case. In *France B. Martins (supra)* the issue involved was the execution and registration of the deed of conveyance, the liability whereof was disputed on account of nonpayment of the part of the consideration by the consumer who claimed adjustment on account of the repair undertaken by him. Whereas in this case the consumer has paid the full consideration but for a dispute between the owner and the promoter the conveyance is not being executed and registered. In that case question of limitation having been found in favour of the consumer, the relief of execution and registration of the deed was granted. Therefore, this decision related to the specific performance of contract for execution and registration of the conveyance, as in the present case. Therefore, there seems to be no distinguishing feature as sought to be urged by Mr. Bhattacharya.

8.2. Then again the decision in *Lt. Col. P.R. Chaudhury (2000 AIR 2000 SCW 2030) (supra)* is a complete answer to the said question as to the binding nature of the decision in *Mr. France B. Martins and Another Vs. Mrs. Mafalda Maria Teresa Rodrigues*, . Inasmuch as a decision of the Apex Court cannot be brushed aside on the ground that it is not in consonance with the statute. In *France B. Martins (supra)*, the Apex Court had held, after holding that the claim before the Consumer Forum being not barred by limitation that it was within the jurisdiction of the commission under the 1986 Act to grant relief of specific performance of the contract for execution and registration of the conveyance.

8.3. In *M/s. Fair Air Engineers Pvt. Ltd. and another Vs. N.K. Modi*, , the Apex Court, after referring to *Lucknow Development Authority Vs. M.K. Gupta*, , held that the provisions of the Act are to be construed widely to give effect to the object and purpose of the Act. It went on to say that (SCC P. 393) : (at pp. 537-38 of AIR).

"15. It is seen that Section 3 envisages that the provisions of the Act are in addition to and are not in derogation of any other law in force. It is true, as rightly contended by Shri Suri, that the words "in derogation of the provisions of any other law for the time being in force" would be given proper meaning and effect and if the complaint is not stayed and the parties are not relegated to the arbitration, the Act purports to operate in derogation of the provisions of the Arbitration Act. Prima facie, the contention appears to be plausible but on construction and conspectus of the provisions of the Act we think that the contention is not well founded. Parliament is aware of the provisions of the Arbitration Act and the Contract Act, 1872 and the consequential remedy available u/s 9 of the CPC i.e. to avail of right of civil action in a competent court of civil jurisdiction. Nonetheless, the Act provides the additional remedy.

*** ** 16. It would, therefore, be clear that the legislature intended to provide a remedy in addition to the consentient arbitration which could be enforced under the Arbitration Act or the civil action in a suit under the provisions of the Code of Civil Procedure. Thereby, as seen, Section 34 of the Act does not confer an automatic right nor creates an automatic embargo on the exercise of the power by the judicial authority under the Act. It is a matter of discretion. Considered from this perspective, we hold that though the District Forum, State Commission and National Commission are judicial authorities, for the purpose of Section 34 of the Arbitration Act, in view of the object of the Act and by operation of Section 3 thereof, we are of the considered view that it would be appropriate that these forums created under the Act are at liberty to proceed with the matters in accordance with the provisions of the Act rather than relegating the parties to an arbitration proceeding pursuant to a contract entered into between the parties. The reason is that the Act intends to relieve the consumers of the cumbersome arbitration proceedings or civil action unless the forums on their own and on the peculiar facts and circumstances of the particular case, come to the conclusion that the appropriate forum for adjudication of the disputes would be otherwise than those given in the Act."

8.4. In Secretary, The Secretary, Thirumurugan Co-operative Agricultural Credit Society Vs. M. Lalitha (Dead) through Lrs. and Others, , the Apex Court, relying upon the decisions in M/s. Fair Air Engineers Pvt. Ltd. and another Vs. N.K. Modi, and Lucknow Development Authority Vs. M.K. Gupta, has given the complete answer to the question before us. We would prefer to quote para 18 thereof :

"18. The decision in Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, also does not help the appellant. The present case is not one where the question to be considered is as to the exclusion of jurisdiction of the civil Court in view of the provisions of Section 90 read with Section 156 of the Act. Provisions of the 1986 Act, as already made clear above, apply in addition to the other provisions available under other enactments. It follows that the remedies available under the 1986 Act for redressal of disputes are in addition to the available remedies under the Act. Under the 1986 Act we have to consider as

regards the additional jurisdiction conferred on the forums and not their exclusion. In Dhulabhai case consideration was whether the jurisdiction of the civil Court was excluded. Propositions (1) and (2) indicate that where the statute gives a finality to the orders of the Special Tribunals, the jurisdiction of civil Courts must be held to be excluded if there is adequate remedy to do what the civil Courts would normally do in a suit. Further, where there is an express bar on the jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil Court. The remedies that are available to an aggrieved party under the 1986 Act are wider.

For instance, in addition to granting a specific relief the forums under the 1986 Act have jurisdiction to award compensation for the mental agony, suffering etc. which possibly could not be given under the Act in relation to dispute u/s 90 of the Act. Merely because the rights and liabilities are created between the members and the management of the society under the Act and forums are provided, it cannot take away or exclude the jurisdiction conferred on the forums under the 1986 Act expressly and intentionally to serve a definite cause in terms of the objects and reasons of the Act, reference to which is already made above. When the decision of Dhulabhai case was rendered, the provisions similar to the 1986 Act providing additional remedies to parties were neither available nor considered. If the argument of the learned Counsel for the appellant is accepted, it leads to taking away the additional remedies and forum expressly provided under the 1986 Act, which is not acceptable."

Conclusion :

9. For all these reasons, we are unable to accede to the contention raised by Mr. Bhattacharya. Having regard to the facts and circumstances of the case and the position in law as discussed above, we hold (1) that the Consumer Forum is competent and has jurisdiction to grant the relief of execution and registration of the conveyance in the kind of contract involved in the present case; (2) that the present proceeding is maintainable before the Consumer Forum; (3) the reservation on the question of law expressed by the learned single Judge cannot be sustained in law. Before we part with, we must record our appreciation of the assistance of both the learned Counsel.

9.1. We make it clear that we have not entered into the merits of the case. We keep all points open to be agitated before the appropriate forum. The observation made above are tentative only for the purpose of deciding the issue before the Court relating to the maintainability of the proceedings before and the jurisdiction of the Consumer Forum only, which we hold as above in favour of the consumer.

Order :

10. The appeal is, therefore, dismissed. The order passed by the learned single Judge under appeal is hereby affirmed subject to the observation made above.

10.1. There will, however, be no order as to costs.

Urgent xerox certified copy of this order, if applied for, be given to the parties, on priority basis.